IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.612 OF 2006
IN
CRIMINAL APPEAL NO.128 OF 2006

Jagdish Bhalairam Gupta ...Applicant

vs.

State of Maharashtra & another ...Respondents

Mr.Ganesh Gole for the Applicant
Mr.Rajesh More A.P.P. for State
Mr.S.R.Rajguru for Respondent No.2

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 19,2006.

P.C. :

1. The Applicant has been convicted for offences punishable under section 306 read with section 34 of the Indian Penal Code. He has been also convicted for offences punishable under section 498-A read with section 34 of the Indian Penal Code. For both the offences he has been sentenced to suffer R.I. for three years. The Applicant (original accused No.1) is the father-in-law of the deceased. The accused No.3 is the husband of the deceased. The marriage between the accused No.3 and the deceased was solemnised on 18th May 1997. The allegation of the prosecution is that six months after the marriage, the deceased was assaulted and harassed as she could not fulfil the demand of vehicle made by the Applicant and his wife. There was a further demand to the deceased of Rs.70000/- to 80000/- to enable the accused no.3 to open a shop. On 17th March 2001, the deceased made a phone call in the night to her parents which was attended by her sister.

The deceased was weeping while talking on telephone and she informed her sister that she was assaulted by her in-laws and her husband, and she wanted to come back to her parents' house. On the next day, a call was received by the parents of the deceased of one Mr.Upadhyay by which they were informed that the deceased attempted to hang herself to a fan by using nylon rope and her condition was serious. As stated earlier, both the offences have been established against the Applicant.

2. This application is for suspension of conviction. It is contended in the Application that on the basis of the conviction, the Applicant has been placed under suspension and there is every possibility that a disciplinary action will be taken against the Applicant and he will be removed from service.

3. The learned Advocate for the Applicant pointed out that Memorandum dated 21st June 2006 has already been issued to the Applicant which disclosed that the employer viz. Mahanagar Telephone Nigam Ltd. was to take disciplinary action against the Applicant on the basis of the conviction. The learned Advocate for the Applicant placed reliance on the various decisions of the Apex Court and this Court and submitted that it is a fit case for granting suspension of the order of conviction. The learned A.P.P. has opposed the application. The second Respondent- the employer of the Applicant has also opposed the application by filing a reply.

4. The learned Advocate for the Applicant relied upon the decision of the Apex Court in case of Rama Narang Vs. Ramesh Narang and others [(1995) 2 S.C.C. page 513). The Apex Court held that section 389 (1) of the Code of Criminal Procedure, 1973 need not be given any restricted meaning and the Appellate Court has got power to pass an order of suspension of conviction. The Apex Court held that in a fit case if the High Court feels satisfied that the order of conviction needs to be suspended so that the convicted person does not suffer from certain disqualification provided in any other statute, it may exercise the power because otherwise the damage done cannot be undone. The Apex Court held that while granting order of suspension, the Court must examine the pros and cons and if it is satisfied that a case is made out for grant of such an order, it may do so. The learned Counsel for the Applicant also relied upon the decision of the Apex Court in case of K.C.Sareen Vs. C.B.I., Chandigarh [(2001) 6 S.C.C. page 584]. In paragraph 11 of the said decision, the Apex Court held as under :

"11. The legal position, therefore, is this: though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389 (1) of the Code, **its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the**

> **order of conviction.** The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance...."
>
> (emphasis supplied)

In the light of these observations, the Apex Court proceeded to consider the case of a public servant convicted under the Prevention of Corruption Act.

5. Thus, the law laid down by the Apex Court is that power has to be exercised in very exceptional cases. The learned Advocate for the Applicant placed reliance on another decision of the Division Bench of this Court in case of Bhagwan T. Sapkale Vs. State of Maharashtra [2001 (5) Bom. Cases Reporter page 689]. This was a case where the Appellant before this Court was convicted for offence under section 302 read with section 34 of the Indian Penal Code. The Appellant was an employee of the Maharashtra State Electricity Board and there was an apprehension that the may lose the employment. In this case, the Division Bench granted suspension of order of conviction. He also relied upon the decision of another Division Bench in Criminal Appeal No.88 of 1997 (Laxman Malhari Sable Vs. State of Maharashtra) and pointed out that the Division Bench suspended the conviction of the Appellant who was convicted for offence under section 304 Part I of the Indian Penal Code. This was the case where the Appellant was likely to incur disqualification as a Councillor of a Municipal Council. He submitted that the learned Single Judge

of this Court in case of Pralhad Sitaram Yeole Vs. State of Maharashtra [2002 (3) Mh.L.J. page 377) granted suspension of sentence in case of an employee of the Maharashtra State Electricity Board who was convicted for various offences under the Prevention of Corruption Act, 1988. Lastly, he placed reliance on the decision of the Apex Court in case of Union of India and others Vs. Ramesh Kumar [(1997) 7 S.C.C. page 514]. He pointed out that the effect of the suspension of conviction under section 389 of the said Code was to keep the conviction in abeyance during the pendency of the Appeal.

6. I have considered the submissions. The latest Judgment in case of Union of India and another Vs. Ramesh Kumar (supra) does not deal with the scope power of the court to grant suspension of conviction and it deals with effect of suspension of order of sentence. The decisions of this court which are relied upon are rendered without considering the Judgment of the Apex Court in case of K.C.Sareen (supra) wherein the Apex Court has held that the power of suspension of conviction has to be exercised only in exceptional cases. In fact some of the said decisions are rendered before the decision in case of K.C.Sareen (supra). In this connection, it will be necessary to refer the decision of the learned Single Judge in case of Deepak Laxman Shinde Vs. State of Maharashtra [2005 (4) Mh.L.J. page 252]. After considering the decision in case of K.C.Sareen (supra), the learned Single Judge held that the power to suspend the conviction has to be

exercised in exceptional cases.

7. In the present case, the offence established against the Applicant is of a serious nature. If the applicant is removed from employment on the ground of conviction, in case of success in Appeal, the Applicant can always seek appropriate relief by filing appropriate proceedings. Considering the seriousness of the allegations against the Applicant, this is not a case where the power should be exercised under section 389 (1) of the Code by suspending the conviction.

8. Hence, I pass the following order :

. Application is rejected.

JUDGE